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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,058	09/09/2004	Salvatore Calabrese	3006051-0005-PCT-US	8460

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EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3772

MAIL DATE	DELIVERY MODE
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10/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/507,058

Applicant(s)

CALABRESE, SALVATORE

Examiner

Michael Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6-28-07.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-11 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese '226 in view of McFarlane, along with Bender'581 and Lerman '597.

Calabrese '226 discloses in figures 1-4 a cervical collar, substantially as claimed. However, Calabrese doesn't disclose the support member being a lateral support member in the form of a plate or the support member being positioned substantially parallel to the wear's jawbone. McFarlane teaches in figures 1-6 a cervical collar comprising a lateral support member 28, disposed under the neck region below the mandible bone. The support member 28 can be interpreted as a plate (a smooth, flat piece of material, Merriam Webster's online dictionary). Bender teaches in figures 1-3 a lateral support member 29 in the form of a plate. However, neither reference discloses or teaches the lateral member being positioned substantially parallel to the wear's jaw. Lerman'597 teaches in figures 4-5 a cervical collar comprising a lateral support member 94, positioned substantially parallel to a wearer's jaw. It would have been obvious to

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one having ordinary skill in the art at the time that the invention was made that the lateral support as taught by McFarlane and Bender could be incorporated into the cervical collar disclosed by Calabrese in order to provide support to the neck of the user. The lateral support as taught by McFarlane and Bender could be positioned substantially parallel to the wearer's jaw as taught by Lerman to allow the lateral support to conform to the anatomical shape of the neck while fitting close to the neck to stabilize the jawbone and the neck. Note: McFarlane and Bender both disclose the plate members are substantially rigid (which means rigid) and relatively rigid (which means rigid).

Claims 2-5, 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Monfardin '027.

Calabrese discloses in figures 1-4 a cervical collar substantially as claimed. McFarlane teaches in figures 1-6 a cervical collar having a lateral support and a plurality of supports 28. Bender teaches in figures 1-2 a cervical collar having a lateral support member 29, in the form of a plate. Lerman teaches in figures 4-5 a cervical collar having a lateral support being positioned substantially parallel to the wearers' jawbone. However, Calabrese, McFarlane, Bender or Lerman discloses the support member being rectangular, substantially flat and having rounded corners. Monfardini teaches in figures 1-3 a support member 20 that is rectangular, substantially flat and has rounded corner (fig. 2). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the support member disclosed by Calabrese and

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taught by McFarlane Bender and Lerman could be constructed to have the same shape as the support member as taught by Monfardini. The reason for making the substitution is both supports are functionally equivalent (used to provide support around the user's neck) and used in the same field of endeavor (cervical collars). The supports could be a plurality of supports as taught by McFarlane and Bender in order to provide support around the user's neck. The lateral support could be on both sides of the collar as taught by Bender and Lerman in figure 4.

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calabrese '226 in view of McFarlane, along with Bender and Lerman.

Calabrese '226 discloses a cervical collar, substantially as claimed. McFarlane teaches a cervical collar with rigid lateral supports. Bender teaches in figures 1-2 a cervical collar having a lateral support member 29 in the form of plate. Lerman teaches in figures 4-5 a cervical collar having a lateral support being positioned substantially parallel to the wearers' jawbone. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that turning a patient's neck from side to side to strengthen neck muscles is old and well know. It doesn't involve an inventive step or novelty to test a lateral support to see if additional lateral supports are needed to support a user's neck. A large individual such as a professional wrestler or football player would require additional support versus a small woman or child wearing the cervical collar would require less support members.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Berley discloses a cervical collar.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael A. Brown/
October 22, 2007